

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1321 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RATILAL NARSING SINDHVA

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

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Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

SERVED for Respondent No. 2

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 24/10/96

ORAL JUDGEMENT

1. This special civil application is preferred by one Ratilal Narsing Sindhva who is working as off-day reliever watchman. He was initially employed at Junagadh S.T.Guest house with effect from 8th March, 1973, and thereafter posted at Keshod Depot and he worked upto 7th June, 1979. It appears that his services were terminated

by the Depot Manager, Keshod on 7th June, 1979 which action was challenged in Reference No.694/79 wherein the Labour Court granted reinstatement with continuity of service and without backwages and pursuant to such order the said petitioner is reinstated at Veraval vide Office Order dated 31st May, 1982.

2. The petitioner thereafter raised industrial dispute which was referred for adjudication on 16th June, 1990 whereby he demanded timescale of pay and arrears, fixation of his pay and that reference was numbered as Ref.No.190/90. Unfortunately, the said demand made by the workman was rejected by the Industrial Tribunal with observations which are required to be quoted as a very strong recommendation is contained in such observations by the Tribunal to the GSRTC. The award is passed by the Industrial Tribunal on 29th June, 1993 and in the penultimate para, i.e. para 11 of the judgment and order the tribunal has very clearly recommended as under:

"I have given my personal reading and thought to the award passed by the learned brother--Mr.B.J.Trivedi. That, in fact, would apply to the present case, since it was not a case of "relieving watchman" but a case of a watchman otherwise on duty and which two characters are clearly different. Therefore, as I have discussed above, in my conclusion, the plea of the workman is not sustainable legally. However, in view of the fact that there is no denial of the fact that the corporation has been utilising services of this man, since last 20 years, and since the S.T.Corporation provides job to hundreds of persons throughout the State and that the Gujarat State Road Transport Corporation, is one of the best public transport undertaking in the country, it would indeed be a just and equitable benevolence, and social justice if the ST corporation takes a positive social justice oriented and objective decision to confer administratively the benefits of regular workers to this workman."

O R D E R

"Reference is rejected, but this tribunal desires the first party to consider

conferment of benefits as stated in para 11, in view of long, though interrupted service of the workman. No order as to costs"

3. It appears that pursuant to the recommendation contained in the order of the tribunal, the petitioner made representation to the respondent-Corporation on 28.9.94 which is produced at annexure "D" to the petition, and in such representation given through his advocate he represented that he should be granted the benefit of timescale of pay from the day he was reinstated in service with all other benefits flowing from the continuation of service. In such representation he positively pointed out that the post of off-day reliever watchman was a permanent post and the same was required to be maintained by the respondent-Corporation for giving benefits being to the regular watchman and therefore the the benefit of timescale of pay should also be extended to such watchman because the post was a permanent and perennial in nature and it being maintained by the corporation as such from the very beginning. He also very clearly pointed out that he enjoyed the status of regular employee and was as such entitled to benefit of timescale of pay and therefore also he should be offered the benefit of timescale of pay from the day he was reinstated in service. It is also alleged that the aforesaid representation of the petitioner unfortunately came to be rejected by the respondent-corporation by communication, dated 25.11.1994. In the said order of rejection what weighed with the corporation was that the main Reference No.190/90 was rejected by the tribunal and therefore the recommendation made in para 11 of the award did not require any specific consideration because such recommendation was inconsistent with the final judgment and order of the tribunal. In fact, these communication addressed by the advocate of the corporation to the present petitioner can not be considered as consideration of recommendations judicially made by the industrial tribunal in para 11 of its judgment and award. Despite rejection of reference the tribunal has found that the case of the petitioner-workman was preeminently fit to be considered for grant of timescale of pay to the petitioner and that the corporation should within its powers consider such claim of the petitioner. The observations made by the tribunal in its para 11 of the award are in fact in the nature of recommendations from the judicial authority to the executive authority and the executive authority can not simply brush aside the judicial recommendations contained in the award or

judgment of the tribunal simply on the ground that the tribunal has ultimately rejected or dismissed the reference. While dismissing the reference, it shall have to be kept in mind that the tribunal has in its judicial power very strongly recommended the case of the workman for grant of regular timescale of pay from appropriate stage not only on moral consideration but also on the claim of doing social justice to a workman who has rendered assistance and continuous service since years as an off-day-reliever watchman. This fact unfortunately is missed while considering the representation of the workman and usual reply is given by the advocate for and on behalf of the corporation. In fact, the recommendation contained in a judicial order is required to be honoured as far as possible and it is not to be lightly brushed aside and the authority to whom the recommendation is made is required to consider the recommendation sincerely and honestly with sincerity and the authority is required to apply its mind to all aspects before brushing aside the judicial recommendations. Unfortunately, the first respondent-Corporation has not undertaken this exercise at all and has very arbitrarily by slipshod reply rejected the representation of the workman who has rushed to this court by way of petition under Article 226 of the Constitution of India.

4. Mr. H. K. Rathod, Ld. advocate for petitioner-workman vehemently submitted that the respondent-corporation should have accepted the judicial recommendation of a judicial body like the Industrial Tribunal and should have with sincerity of purpose and implementation of the spirit of social justice ought to have granted relief of grant of timescale of pay to the workman who has continuously and consistently worked as off-day-reliever watchman since number of years. He submitted that the corporation has unfortunately failed in its duty and has not considered the recommendation at all and has rejected the recommendation on a very arbitrary and capricious ground without applying its discretion judiciously to the recommendation made by the legally constituted judicial forum. The recommendations of the Industrial Tribunal are in the nature of recommendations of a quasi judicial body and they are to be respected by the authorities to whom they are made. Such recommendations can not be very lightly brushed aside without assigning any reason and it would be doing injustice by simply rejecting the recommendation of a judicial body like the Industrial tribunal without assigning any specific reason.

5. In response to the service of rule, Mr.Y.S.lakhani, Id.advocate appeared for the respondent-corporation and on going through the recommendation contained in para 11 of the judgment and award of the tribunal, and after consulting the corporation, he has fairly stated before this court that the respondent-corporation has no objection to grant regular timescale of pay to the petitioner from the date the petition is allowed by this court. The approach of the corporation, to the aforesaid extent, is undoubtedly just and appreciable. However, this court fails to understand as to why such a benefit is confined from the date of judgment of this court especially when the petitioner has been demanding such a relief from the date of reference and that there was a positive recommendation contained in the judgment and award of the tribunal. If that recommendation is to be respected, which now appears to be the desire of the corporation, in the opinion of this court, it would be just and proper to grant to the present petitioner the regular timescale of pay and to place him in the regular timescale of pay from the date of the judgment and award of the tribunal. Such order will be consistent with the recommendation contained in para 11 of the judgment and award of the tribunal and would be consistent with the judicial propriety which is expected of an executive body. Therefore, in view of the partial concession made by the corporation, which is noted hereinabove, and in view of the views expressed by this court in the aforesaid observations, this court would, in the facts and circumstances of the case, direct the respondent-corporation to put the present petitioner in the regular timescale of pay from the date of the judgment and award of the tribunal, i.e. 29th June, 1993 and to give the benefit of such timescale of pay from that date. That would be consistent with the recommendations of the tribunal as well as in compliance with the spirit of the recommendations and therefore it would be just and proper to issue rule in the aforesaid terms to the respondent corporation to grant the regular timescale of pay to the petitioner from 29th June, 1993. Rule is made absolute accordingly. No costs.

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